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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 PAUL JAIN,

16 Defendant.

Case No. CR-98-40167-DLJ

17 UNITED STATES' SENTENCING
MEMORANDUM AND MOTION
FOR DOWNWARD DEPARTURE

18 Date: April 11, 2003
19 Time: 10:00 a.m.
20 Court: Hon. D. Lowell Jensen
Courtroom 1

21 OVERVIEW AND RECOMMENDED SENTENCE

22 The defendant, Paul Jain, was the Chief Executive Officer of Media Vision, a
23 Silicon Valley technology company that went public in the early 1990s. Jain founded the
24 company with visions of turning it into the next Microsoft or Intel. Fueled by this
25 ambition, Jain quickly raised hundreds of millions of dollars in the stock market from
26 investors who placed their trust in the defendant's integrity and business judgment.
27 Unfortunately, competition turned out to be much stiffer than expected, and the
28 company's actual performance failed to meet Jain's unrealistic predictions. And it is here
that the defendant crossed the line from competition to crime.

Rather than report the truth about the company's lagging sales and profit figures –

1 as the law required— the defendant directed his subordinates to artificially inflate the
2 numbers by virtually every means available. To maintain the fiction that Media Vision
3 was healthy and growing by leaps and bounds, Jain and the other defendants cooked the
4 books with millions of dollars of phony sales and imaginary inventory; they
5 recharacterized expenses as assets to boost reported profits, hid returned product at a
6 secret warehouse, lied to their auditors, lied to the analysts, and lied to the SEC.
7 Ultimately, the house of cards toppled and the truth was revealed. But not without
8 devastating consequences. The result of this massive and prolonged fraud on the
9 company's shareholders and bondholders was to drive this once-promising computer
10 technology company into bankruptcy, and cause losses of more than \$200 million to
11 innocent investors.

12 By his own account, Paul Jain was the driving force behind this fraud. He was the
13 one who called the shots and the one who set this fraud in motion. As a result, Jain must
14 bear the greatest responsibility for the damage wrought by this criminal activity. Faced
15 with the evidence of his wrongdoing, Jain decided to plead guilty and he now stands
16 convicted of two counts of wire fraud, in violation of 18 U.S.C. § 1343. There is no
17 question that Jain should be sentenced to a substantial term of incarceration for his
18 crimes.

19 It is nonetheless true, however, that Paul Jain stands before this Court as a man
20 who has accepted full responsibility for his criminal actions. Moreover, in the two years
21 since he pleaded guilty, Jain has made genuine – and extensive – efforts to assist the
22 government in the prosecution of his co-defendant, Steve Allan, who was Media Vision's
23 Chief Financial Officer. As a result of these efforts, the United States has concluded that
24 Jain provided "substantial assistance," as that term is used in USSG §5K1.1, and moves
25 the Court for a downward departure from offense level 27 to offense level 20. For the
26 reasons discussed below, we request that the Court sentence Jain to a prison sentence of
27 30 months and order him to immediately sell his Meadow Court home and surrender the
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entire equity (estimated at approximately \$260,000) as restitution.

SENTENCING GUIDELINES CALCULATION

The Probation Office properly calculated the applicable Sentencing Guideline range as follows:

Base Offense Level, §2F1.1(a)	6
Loss in Excess of \$80 million, §2F1.1(b)(1)(S)	+18
More than minimal planning, §2F1.1(b)(2)(A)	+2
Role in the Offense Adjustment Organizer/Leader, §3B1.1(a)	+4
Acceptance of Responsibility, §3E1.1	-3
Adjusted Offense Level (without departure)	<u>27</u>
Sentencing Range without §5K1.1 departure	70 to 87 months

JUSTIFICATION FOR DOWNWARD DEPARTURE

Paul Jain pleaded guilty in August 2000, shortly before he was scheduled to stand trial, and slightly more than two years after he and Steve Allan were first indicted. In two years of cooperation with the government, Jain submitted to many debriefings with government counsel and FBI agents, spent a great deal of time with his counsel refreshing his recollection, and testified at length in both trials of Steve Allan.

Given that Jain was involved in nearly every decision the executives took to inflate revenues, hide expenses, and exaggerate profits, Jain was necessarily best situated to provide the jury the overall context for the case. He was able to explain Media Vision's flawed business strategy from the beginning – a strategy that he initiated – and he described in great detail how he pressed others in the company to alter the books in various ways to cover up the company's poor performance.

Although the government doubts that the jury placed great reliance on anything Jain testified to that was not otherwise corroborated, we do think that Jain's testimony was at all times truthful. And there is little doubt that, in some significant measure, Jain assisted the government in its efforts to secure Allan's convictions.

1 It must be noted, however, that Jain cooperated very late in the process, and that he
2 did not truly save any significant prosecutive resources. In short, Jain's cooperation was
3 helpful only against a co-defendant who the government was already well-prepared to try.
4 He also was, indisputably, the most culpable of the co-conspirators that were charged in
5 connection with the demise of Media Vision.

6 For these reasons, we believe that Jain should still be required to serve a
7 substantial period of incarceration, even after accounting for his two years of extensive
8 cooperation. Without any departure, Paul Jain would be facing a minimum guideline
9 sentence of 70 months in prison. Evaluating the factors to be considered under USSG
10 §5K1.1, we would propose an 8-level downward departure to Level 19, and a sentence of
11 30 months in prison.

12 As the Court may be aware from the presentence report, we had originally
13 recommended that the Court depart downward to a 36-month sentence for Jain. We
14 continue to believe that a 34-month reduction from his otherwise applicable guideline
15 range (70 to 87 months) appropriately captures the value of Jain's substantial assistance to
16 the government, under the §5K1.1 factors. Nevertheless, in light of the lenient 41-month
17 sentence imposed upon Steve Allan – a co-defendant who the government regards as only
18 somewhat less culpable than Jain, and one who put the government to its proof at two
19 trials where he testified falsely on the witness stand – we are concerned about the
20 negative message that could be sent to prospective cooperators that accepting
21 responsibility and assisting the government provides no meaningful benefit. Thus,
22 recognizing that proportionality among similarly situated co-defendants is one of the
23 factors influencing the ultimate sentencing determination, the United States has
24 concluded that a 30-month sentence sends a more appropriate message to prospective
25 cooperators and imposes a fair and just punishment on Paul Jain.

26 Finally, we ask that the Court require the defendant to immediately sell his
27 Meadow Court home in Squaw Valley, as he has agreed to do, and pay a lump-sum
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1 amount to the Clerk of Court equal to the entire equity value in that home (which,
2 according to the presentence report is expected to be approximately \$260,000). The
3 Court should order that the amount be paid within 60 days to an interest-bearing account
4 administered by the Clerk of Court. After all of the Media Vision defendants have been
5 sentenced and ordered to pay restitution, the total amount can be distributed to Media
6 Vision's victims by the claims administrator, Gilardi & Co., who administered payments
7 under the Plan of Allocation in the civil class action to a total of 6,798 claimants.

8 Consistent with our position with respect to defendant Steve Allan, the United
9 States is not requesting that the Court require the defendant to make continuing restitution
10 payments over time. From a logistical perspective, it would not be economically practical
11 to distribute relatively small progress payments to the victims, since the administrative
12 costs alone would dwarf the payments. Instead, a single lump-sum payment, administered
13 by the existing claims administrator, can be distributed to the victims at relatively low
14 cost in a short period of time.

15 CONCLUSION

16 The Court should adopt the Probation Officer's offense level calculation of 27.
17 The United States requests that the Court depart downward under USSG §5K1.1 to
18 offense level 19 and impose a sentence 30 months and restitution in the amount of
19 \$260,000.

20 Respectfully submitted,

21 KEVIN V. RYAN
22 United States Attorney

23 Dated: 4/8/03

24 MILES F. EHRLICH
25 JOHN H. HEMANN
26 Assistant United States Attorneys
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TOTAL P.07